



Water Quality NewsFlash

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TMDLs – Federal Appeals Court says “daily” means “every day” (who would have guessed?) – Total maximum daily loads (TMDLs) is the rather awkward name for the process prescribed by the Clean Water Act for allocating a “safe” loading of pollutants going into a waterway. A recent U.S. Court of Appeals decision for the District of Columbia Circuit reversed a lower court decision and ruled that “daily” means “every day” for TMDLs rather than annually or some other interval (*Friends of the Earth Inc. v. EPA*, D.C. Cir., No. 05-5015, 4/25/06). The court pointed out that, “Doctors making daily rounds would be of little use to their patients if they appeared seasonally or annually.” Although this Court of Appeals decision does not directly affect California it may have national implications if other Courts of Appeal rule in a similar manner or if the U.S. Supreme Court concurs. EPA has indicated that it will attempt to change the TMDL regulations in order to address the ruling. Earlier attempts to amend the TMDL provisions have proven controversial and subsequently failed.

Assigning allocations to the various sources on a daily basis is often not practical so allocations are currently generally assigned for a longer time interval. For example, the proposed SF Bay Mercury TMDL allocates an annual loading to urban runoff of 82 kg. In addition the TMDL allows urban agencies the option of showing progress by means of a rolling five-year annual average. A *daily* loading allocation for an intermittent discharge such as storm water would be very difficult to formulate and implement. <http://pacer.cadc.uscourts.gov/docs/common/opinions/200604/05-5015a.pdf>.

LA River Trash TMDL – California Supreme Court rejects appeal – As discussed in *NewsFlash 06-06*, the 4th Appellate District Court upheld a lower court’s invalidation of the TMDL and agreed that the Regional Board will need to complete an Environmental Impact Report (EIR) for the TMDL to proceed. The Appeals Court, however, rejected arguments by the cities challenging the TMDL that the TMDL lacked a study of the assimilative capacity of the river (i.e., an evaluation as to whether some trash would be acceptable). The Appeals Court also rejected arguments that the TMDL required a cost/benefit analysis or the consideration of economic factors. These issues were appealed to the Supreme Court by the cities. The Supreme Court has refused to hear the appeal which means that the TMDL may proceed once the Regional Board completes the required environmental impact documentation. Appeals Court decision: <http://www.courtinfo.ca.gov/opinions/documents/D043877.PDF>

SF Regional Board – Stormwater workshop – On May 10, following the regular Board meeting, the Board’s Stormwater Subcommittee will hold a workshop to address stormwater management, including the pending Municipal Regional Permit for storm water (See *NewsFlash 06-17*). Agenda: http://www.waterboards.ca.gov/sanfranciscobay/agenda_may_06.htm

Reminder – CASQA meeting – San Jose, May 12th; topic: *Approaches to Stormwater Monitoring: Answering the Important Questions about Impact and Effectiveness*. See: <http://www.casqa.org/>

WQ NewsFlash is a weekly update of storm water and related news for the Department. *Verify information before taking action on these bulletins.* Contact Betty Sanchez, Betty_Sanchez@dot.ca.gov (916) 653-2115, or Fred Krieger, (510) 843-7889, fkrieger@msn.com with questions or to be added or deleted from e-mail list. Posted online at: <http://www.dot.ca.gov/hq/env/stormwater/publicat/newsflash/index.htm>